

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH MOROSKY,)
Plaintiff,) Civil Action No. 12-996
v.) Judge Cathy Bissoon
ALLSTATE INSURANCE COMPANY,)
Defendant.)

ORDER

Defendant's Motion to Dismiss (Doc. 7) will be denied.

As to Count I of the Amended Complaint, Defendant argues that Plaintiff's claim should be "captioned as an underinsured motorist claim," rather than breach of contract. *See* Def.'s Br. (Doc. 8) at 7. Semantic niceties aside, Count I clearly asserts a claim for the payment of UIM benefits. *See* Am. Compl. (Doc. 6) at ¶ 26. Although the purported shortcomings regarding Count I could be further addressed through amendment, Plaintiff's current Complaint satisfies the relatively liberal pleading standards applicable in federal court, and Defendant's request for dismissal is denied.

As to Count II, Plaintiff has pleaded sufficient facts to state a claim under Pennsylvania's bad faith statute. *Compare Post v. St. Paul Travelers Ins. Co.*, -- F.3d --, 2012 WL 3095352, *20 (3d Cir. Jul. 31, 2012) (bad faith established where insurer did not have reasonable basis for denying benefits under policy, and it knew or recklessly disregarded lack of reasonable basis) *with* Am. Compl. at ¶¶ 16-21 & Count II (alleging that Defendant summarily rejected Plaintiff's UIM claim, only one day after Plaintiff's request for coverage and without meaningful investigation). Defendant's challenge is better suited for summary judgment, after the parties

have enjoyed the benefit of discovery. *See Haines v. State Auto Property & Cas. Ins. Co.*, 2009 WL 1767534, *6 (E.D. Pa. Jun. 22, 2009) (holding same, citation to quoted source omitted). Thus, Defendant's request for dismissal of Count II is denied, without prejudice to renewal on summary judgment.

Consistent with the foregoing, Defendant's Motion to Dismiss (**Doc. 7**) is **DENIED**.
IT IS SO ORDERED.

September 28, 2012

s\Cathy Bissoon

Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record